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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

TRUSTEES OF THE NEVADA RESORT
ASSOCIATION-INTERNATIONAL
ALLIANCE OF THEATRICAL STAGE
EMPLOYEES AND MOVING PICTURE
MACHINE OPERATORS OF THE UNITED
STATES AND CANADA LOCAL 720
PENSION TRUST; NEVADA RESORT
ASSOCIATION-INTERNATIONAL
ALLIANCE OF THEATRICAL STAGE
EMPLOYEES AND MOVING PICTURE
MACHINE OPERATORS OF THE UNITED
STATES AND CANADA LOCAL 720
PENSION TRUST,

Plaintiffs,

vs.

KOVAC DESIGN, LTD. a Nevada
corporation,

Defendant.

Case No.

COMPLAINT

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1 Plaintiffs allege:

2 1. This action arises under the Employee Retirement Income Security Act of 1974
3 (“ERISA”), 29 U.S.C. §§ 1001-1500, as amended by the Multiemployer Pension Plan
4 Amendments Act of 1980 (“MPPAA”) (29 U.S.C. §§ 1001-1461 (1982)).

5 **PARTIES**

6 2. The Nevada Resort Association-International Alliance of Theatrical Stage
7 Employees and Moving Picture Machine Operators of the United States and Canada Local 720
8 Pension Trust (the “Plan”) is an “employee benefit pension plan” as defined in 29 U.S.C. §
9 1002(2); and a “multiemployer plan” as defined in 29 U.S.C. §§ 1002(37) and 1301(a)(3).

10 3. The Board of Trustees (the “Trustees”) for the Plan is the “plan sponsor” within
11 the meaning of 29 U.S.C. § 1002(16)(B)(iii), and the Trustees are fiduciaries of the Plan under 29
12 U.S.C. § 1002(21)(A).

13 4. Total Crew Services, Inc. (“Total Crew”) is a now-defunct Nevada corporation,
14 with its principal place of business located in Reno, Nevada.

15 5. Defendant Kovac Design, Ltd. (“Kovac Design”) is a Nevada limited liability
16 company, with its principle place of business located in Reno, Nevada.

17 6. Kovac Design and Total Crew are controlled by a brother-sister controlled group
18 pursuant to 26 U.S.C § 1563(a)(2).

19 **JURISDICTION AND VENUE**

20 7. This Court has jurisdiction over this action pursuant to 29 U.S.C. § 1451(c).

21 8. The District of Nevada is a proper venue pursuant to 29 U.S.C. § 1451(d), as the
22 Plan is administered in Las Vegas, Nevada.

23 **SOLE CLAIM FOR RELIEF**
24 **Payment of Entire Withdrawal Liability**

25 9. Paragraphs 1 through 8 are restated and incorporated by reference.

26 10. Total Crew was a participating employer in the Plan.

27 11. Total Crew withdrew from participation in the Plan, which required the Plan to
28 assess withdrawal liability against Total Crew in the amount of \$382,620.

1 12. By letter dated May 17, 2019, the Plan notified Total Crew of the assessed
2 withdrawal liability and that payment could be made in full or in 35 quarterly payments beginning
3 on June 1, 2019, plus a final payment of \$9,463.41.

4 13. Despite several further demands from the Plan, Total Crew never paid any of the
5 withdrawal liability it owed and missed the deadline to challenge the assessment in arbitration, as
6 required by 29 U.S.C. § 1401.

7 14. On March 5, 2020, Total Crew filed a voluntary Chapter 7 bankruptcy petition in
8 the United States Bankruptcy Court, District of Nevada.

9 15. Total Crew and Kovac Design are both owned entirely by the married couple Don
10 Smith and Sheri Kovac, directly and/or pursuant to community property laws of the state of
11 Nevada.

12 16. As a result, under 26 U.S.C. § 26 U.S.C § 1563(a)(2), Total Crew and Kovac
13 Design are a “Controlled Group of Corporations.”

14 17. All members of a Controlled Group of Corporations are considered to be the same
15 employer for purposes of withdrawal liability, making Kovac Design liable for the withdrawal
16 liability incurred by Total Crew. 29 U.S.C. § 1301(b)(1).

17 18. Total Crew has filed bankruptcy, but Kovac Design has not.

18 19. Pursuant to 29 U.S.C. § 1399(c)(5)(A) and 29 U.S.C. § 1301(b)(1), the Plan seeks
19 a money judgment against Kovac Design of the entire assessed withdrawal liability plus interest,
20 liquidated damages, and attorney’s fees and costs.

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1 WHEREFORE, Plaintiffs prays for relief as follows:

2 1. For a judgment against Kovac Design, Ltd. for the entire amount of the assessed
3 withdrawal liability, interest, liquidated damages, and attorney's fees and costs.

4 2. For additional interest, liquidated damages, attorney's fees and costs that may
5 accrue prior to entry of judgment.

6 2. For other equitable relief as provided by ERISA; and,

7 3. For any other relief the Court deems appropriate.

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9 Dated: June 23, 2020.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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